1945

File No. O Trusts/45

Legal Department

A **BRANCH**

Subject:—

Opinions Under the

Indian Trusts Act, 1882.

(E)

File No. O. Trusts/45

Gen. 194 e.

386-A

C O N T E N T S.

Legal Department File No. O. Trusts/45.

Sr.No.	Compilation No.	Subject.	Pages.
		Indian Trust Act,1882.	
1	A.I.No.3413 dt.17-4-45. O.No.4239/ 5-6-45.	Whether indirect charges like the estimated costs of services rendered part time to the Funds by the Judges and Staff of the Small Causes Court, can be debited to the administration funds.-	1-2
2	A.I.No.6041 dt.18-7-45. O.No.7070 dt.26-9-45.	Whether, the Provincial Sailors, Soldier and Airman's Board being unincorporated, the hostel buildings can be transferred to some individual members comprising the board as trustees .-	3-4
3	A.I.No.8706. dt.5-12-45 O.No.9651 - dt. 27-12-45.	Whether Govt's sanction would be necessary for the proposed transfer of the funds by the Present Board of Trustees to Soldiers, Sailors, Airman's Board.-	5-6

AHB.
11.7.

PHH
2/7

NRS
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R.I.No.3403 Office of the R.L.A.
17-4-45.

The Accountant-General, Bombay is correct in stating that the R...A. has not held that the funds concerned cannot be debited with the cost of the staff administering the three Acts concerned under the control of the Judges and Registrar. Neither has R.L.A. expressed any opinion on whether the funds can be debited with the cost of Court accommodation and Court lighting charges. The R.L.A. in his opinion No.5042 dated 23rd July 1943 was asked whether he agreed with Secretary R.D.'s note of 31-5-1943. That note distinguished Courts and Registrars on the one hand and their staffs on the other hand. Secretary R.D. held that the Courts and the Registrars could no be remunerated, whereas remuneration was admissible to their staffs. The R.L.A. agreed with that opinion.

2. It is necessary to elaborate that opinion somewhat. Section 6K of the Mussalman Wakf Act, 1923 provides that the Wakf Administration Fund——shall be applicable to the payment of charges for and expenses incidental to the registration, superintendence, administration and control of wakfs etc. The Act casts on the Court certain duties and these duties form part of the administration of the Act. Their performance occupies some time of the Judge concerned and thereby there is incurred expenditure which may be termed "part of the charges of administration". However, these duties are cast upon the Judge by definite provisions of the Act and he cannot delegate them. On the other hand, the Judge is not compelled to employ the Court's staff or make use of Court accommodation. Section 6-O(2) provides that it shall be competent to the Court to employ upon such terms and conditions as maybe prescribed such persons as may in the opinion of the Court be necessary for carrying out the purposes of this Act and to pay them such remuneration from the Wakf Administration Fund as may be prescribed. If instead of recruiting new employees the judge decides to employ the existing court...

staff it is reasonable that the Fund should be debited with the expense of that staff and with a charge for Court accommodation; and it is reasonable also to hold that such debits are permissible under the Act, subject to rules made thereunder. The question whether the amount debited to the Fund should be entirely ~~xx~~ to Government or partly ~~xxxxxxxxxx~~ to the District Court staff, is a question of policy with which the A.L.A. is not concerned. The funds under the Bombay Public Trusts Registration Act, 1935 and the Parsi Public Trusts Registration Act, 1936 can legally be debited in the same way. But debits for the services rendered by the Judges and Registrars are in a different category. These services are statutory duties which devolve upon them by virtue of their office and there is no specific provision in the Acts for the cost of these services being debited to the funds concerned. It seems safest to hold that such debits cannot be made unless the Acts are amended.

Id/- P.H.M.

Remembrancer of Legal Affairs.

U.R.to A.D.No.4239, dated the 5th June 1945.

RHB.
11.7.

L.D. No. 8041
18.7.45

Office of the R.L.A.

The view taken by H.D. that the Provincial Sailors Soldiers and Airmen's Board being unincorporated, the hostel buildings will have to be transferred to some individual members comprising the board as trustees is correct. In his last opinion No.4193 dated 1-6-1945 the R.L.A. opined that the Board cannot be registered under the Societies Registration Act, 1860. In giving that opinion the R.L.A. considered that the object of the Board was to hold the amounts in trust for the decorees and as such it could not be registered under the Societies Registration Act. It now transpires that the Board is constituted also for the purpose of promoting the educaton of the children of the ex-soldiers, sailors and airmen and as such it can be registered under the Societies Registration Act. But since the objects of the Board are partly within and partlywithout the ~~xxx~~ ambit of the Societies Registration Act, the registration of the Board would create further legal complications. In the circumstances the second course suggested bythe R.L.A. in para.4 of his opinion No.6062 dated 14th August 1945 should be followed in the present case and the hostel buildings transferred to a small number of persons as trustees.

2. The conditions proposed by the P.W.D. appear to be in order.

Id/- P.M.M.
21/9/45.

Remembrancer of Legal Affairs.

U.S. to H.D.,No. 7070, dated the 26th September 1945.

RHB.
11.7.

R.T. No. 8706
5.10.45

5-6

Office of the R.L.A.

The facts stated for the opinion of the R.L.A. give no indication as to the nature of the trust contituted by "the Bombay Presidency War and Relief Fund". It is not known whether the present Board of Trustees act as trustees of several, separate trusts for private individuals or whether the entire fund constituted one charitable trust. Whatever the nature of the trust might be, as there appears to be no formal instrument creating the trust and authorising the trustees to retire from the trusts, Court's sanction would be necessary for the proposed transfer or the funds by the present Board of Trustees to Soldier, Sailor Airman's Board.

If the said trust is in the nature of a public charitable trust the Court might be approached under section 92 of the Civil Procedure Code; if the same represent distinct private trusts for speficied individuals a petition to the Court under the Indian Trusts Act would be necessary But whatever the mode of procedure to be adopted, it is clear that the transfer of the funds cannot be made with out previous sanction of the Court.

Id/- P.N.M.
22/12/45
Remembrancer of Legal Affairs.

U.R.to P.& S.D., No.9651, dated the 27th December 1945.

RHB.
11.7.